

Decision 90-10-020 October 12, 1990

OCT 12 1990

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)
Sanford A. McColley and Kathy J.)
McColley, to sell and transfer a)
certificate of public convenience)
and necessity (PSC-1395) authorizing)
their operation as a passenger stage)
corporation, and of Judy Brissey, an)
individual, to acquire and control)
the certificated passenger stage)
corporation operations of Stan and)
Kathy McColley.)

Application 90-06-054
(Filed June 22, 1990)

O P I N I O N

In this decision we grant authority to transfer a certificate of public convenience and necessity for passenger stage service (PSC-1395) which we originally issued in Decision (D.) 85-09-039.

The applicants are Sanford A. McColley and Kathy J. McColley (transferors), doing business as, A Touch of Class Limousine of San Jose and, Judy Brissey (transferee). Transferors currently provide an on call passenger stage service between points in San Mateo and Santa Clara counties and San Jose International Airport, San Francisco International, and Oakland Airport. Transferee is an individual who currently holds Transportation Charter Party Permit No. 6259P.

The McColleys no longer desire to operate the service and have entered into a purchase and sell agreement with Brissey. Under the agreement Brissey will pay \$115,000 on an installment basis.

The applicants also request that Application (A.) 89-08-026 for approval of a Zone of Rate Freedom (ZORF) be included in the proposed transfer. The existing authority will not otherwise be changed.

Both applicants submitted financial information. Transferee provided an unaudited balance sheet showing assets of \$520,000 and liabilities of \$283,420, for a net worth of \$236,580.

Applicants state that only one similar passenger stage operation exists in the area and that sufficient business exists to support two competing carriers. Applicants submit that the proposed transfer is in the public interest because it will allow continuous service without a break during the transfer of ownership. Transferee states that she will comply with all regulations and requirements of the Commission.

The matter was included in the Commission's Daily Calendar on June 29, 1990. On July 27, 1990 the Commission's Transportation Division filed a timely protest to the application. The protest alleged that applicant McColley appeared to have unlawfully assigned its authority to other parties, and that a staff investigation conducted in 1990 indicated that McColley had operated the service without liability insurance and while its charter party and PSC authorities were suspended. Staff further alleged that applicant Brissey had taken part in the unlawful activity.

On August 21, 1990 staff filed a motion to withdraw its protest in return for applicant Brissey's agreement to four conditions which staff requests be made a part of any decision approving the transfer. The conditions are attached as Appendix A to this decision.

Staff, independently of the agreement with applicant Brissey, requests that any approval of the transfer of passenger stage authority be made on an interim basis and that the docket in this matter be kept open for a period of one year. If at any time during the one-year period staff should determine that Brissey had violated the agreement, staff would move to have the Commission reopen this proceeding for the purpose of suspending or revoking

the certificate." (Protest and Request for Hearing, filed July 27, 1990, p. 5.)

The conditions to which both the staff and Brissey have agreed reflect the requirements of existing law and are reasonable under the circumstances of the proceeding. They will be adopted and made part of passenger stage corporation certificate PSC-6259.

Staff's request that our approval be granted on an interim basis for a probationary period of one year is denied for several reasons. First, Brissey, as is any holder of a passenger stage certificate is obligated to obey all orders rules and decisions of the Commission. In the event that staff discovers a violation, it may at any time bring the matter to the Commission and it is not necessary that the docket in this proceeding remain open.

Second, a probationary period would unnecessarily clutter the Commission's docket and could require a future final decision by the Commission, which in, light of the agreement, would also appear unnecessary.

Staff's diligence in this matter deserves our favorable recognition, and we are confident that the staff can and will continue to enforce the Commission's rules and orders without the need to resort to a probationary period.

In conclusion, we find that applicant Brissey has the financial means and is qualified to operate as a passenger stage corporation. We also find that the proposed transfer is in the public interest. The applicant's request that the ZORF authority requested in A.89-08-026 was granted by D.90-09-020 on September 12, 1990. That decision granted the ZORF authority to the McColleys and, when that decision becomes effective, the ZORF is incorporated in PSC-1395 and transferred to Brissey by this decision.

Findings of Fact

1. Transferor is operating as a passenger stage corporation pursuant to certificate of public convenience and necessity PSC-1395.

2. Applicants seeks approval of a transfer of PSC-1395 to Judy Brissey.

3. Applicants wish to include the authority applied for in A.89-08-026 and which was granted in D.90-09-020 in the proposed transfer. In all other respects the existing authority will remain unchanged.

4. Transferee has the financial resources and experience necessary to perform the proposed operations.

5. On July 27, 1990 the Transportation Division filed a timely protest and request for hearing this proceeding.

6. On August 18, 1990, applicant Brissey and the Transportation Division agreed that the conditions attached as Appendix A to this decision be made a part of PSC-6259 in return for the withdrawal of the protest.

7. On August 21, 1990 the Transportation Division filed a motion to withdraw its protest and recommended that the August 18, 1990 agreement be incorporated into PSC-6259.

Conclusions of Law

1. The proposed transfer is in the public interest and should be authorized. A public hearing is not necessary.

2. The conditions agreed to by applicant Brissey and the Transportation Division and included as Appendix A of this decision should be made a part of PSC-6259.

3. Transportation Division's request that PSC-6259 be granted on an interim one-year basis should be denied.

Only the amount paid to the State for operating rights may be used for rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

O R D E R

IT IS ORDERED that:

1. Sanford A. McColley and Kathy J. McColley may transfer the certificate of public convenience and necessity PSC-6259, including the ZORF authority granted in D.90-09-020, to Judy Brissey (transferee).

2. Transferee shall:

- a. File with the Transportation Division written acceptance of the certificate and a copy of the bill of sale or other transfer document within 30 days after transfer.
- b. Amend or reissue seller's tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective, and allow at least 10 days' notice to the Commission.
- c. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
- d. Maintain accounting records in conformity with the Uniform System of Accounts.
- e. Remit to the Commission the Transportation Reimbursement Fee required by Public Utilities (PU) Code § 403 when notified by mail to do so.
- f. Comply with the terms contained in Appendix A attached hereunto.

3. If the transfer is completed, on the effective date of the tariffs a certificate of public convenience and necessity is granted to Judy Brissey, an individual, authorizing her to operate as a passenger stage corporation, as defined in PU Code § 226, between the points and over the routes set forth in Appendix PSC-6259, between the points and over the routes set forth in Appendix PSC-6259, to transport passengers and baggage.

4. Before beginning service to any airport, transferee shall notify the airport's governing body. Applicant shall not operate into or on airport property unless such operations are also authorized by the airport's governing body.

5. Operations may begin on the date that the Executive Director mails a notice to purchaser that its evidence of insurance is on file with the Commission and that the CHP has approved the use of purchaser's vehicles and terminal for service.

6. The certificate of public convenience and necessity granted by D.85-09-039 is revoked on the effective date of the tariffs.

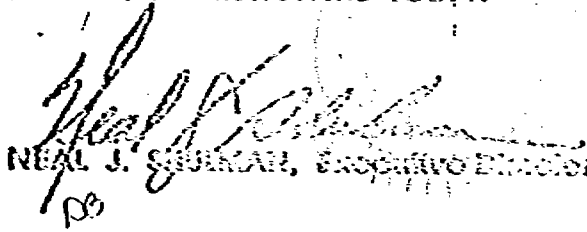
7. Transferee shall assess fares no higher than those presently named in the tariff of transferor until such time as increases in such fares may be authorized by the Commission.

This order is effective today.

Dated October 12, 1990, at San Francisco, California.

G. MITCHELL WILK
President
FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SISKIN, Executive Director

Appendix PSC-6259

Judy Brissey

Original Title Page

CERTIFICATE
OF
PUBLIC CONVENIENCE AND NECESSITY
AS A PASSENGER STAGE CORPORATION
PSC-6259

Showing passenger stage operative rights, restrictions, limitations,
exceptions, and privileges.

All changes and amendments as authorized by
the Public Utilities Commission of the State of California
will be made as revised pages or added original pages.

Supersedes authority heretofore granted to
Sanford A. and Kathy J. McColley

Issued under authority of Decision 90-10-020,
dated October 12, 1990, of the Public Utilities Commission of
the State of California in Application 90-06-054.

I N D E X

| | <u>Page</u> |
|---|-------------|
| SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS, AND SPECIFICATIONS | 2, 3 |
| SECTION II. SERVICE AREAS | 4 |
| SECTION II. ROUTE DESCRIPTION | 4 |

Issued by California Public Utilities Commission.

Decision 90-10-020, Application 90-06-054.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS.

This certificate supersedes all operative authority granted to Sanford A. and Kathy J. McColley.

Judy Brissey, by the certificate of public convenience and necessity granted by the decision noted in the margin, is authorized to transport passengers and their baggage on an "on-call" basis, between points in the Counties of San Mateo and Santa Clara, on the one hand, and San Francisco (SFO), Oakland (OAK), and San Jose (SJC) International Airports, and the maritime piers in San Francisco, on the other hand, subject, however, to the authority of this Commission to change or modify the routes at any time and subject to the following provisions:

- a. When route descriptions are given in one direction, they apply to operation in either direction unless otherwise indicated.
- b. The term "on-call, as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs and timetables shall show the conditions under which each authorized on-call service will be rendered.
- c. No passengers shall be transported except those having a point of origin or destination either at SFO, OAK, SJC, or a pier in San Francisco.

Issued by California Public Utilities Commission.

Decision 90-10-020, Application 90-06-054.

SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS, LIMITATIONS,
AND SPECIFICATIONS. (Continued)

- d. This certificate does not authorize the holder to conduct any operation on the property of or into any airport unless such operation is authorized by the airport authority involved.
- e. Applicant's operations shall be conducted upon filing and in effect with this Commission evidence of adequate liability insurance protection as required by General Order 101-series.
- f. Only vehicles covered by applicant's own liability insurance policy shall be operated by applicant.
- g. Before employing a sub-hauler, applicant will verify that a sub-carrier's operating authority and it's liability insurance is in good standing with the Commission.
- h. This authority shall be used exclusively by the applicant. Before applicant leases, assigns, or provide any other arrangement for this authority, she will request approval from the Commission.

Issued by California Public Utilities Commission.

Decision 90-10-020, Application 90-06-054.

Appendix PSC-6259

Judy Brissey

Original Page 4

SECTION II. SERVICE AREAS.

The Counties of San Mateo and Santa Clara.

SECTION III. ROUTE DESCRIPTION.

Over the most appropriate streets and highways between points in the Counties of San Mateo and Santa Clara then to one or more of the following:

SFO, OAK, SJC, and the maritime piers of San Francisco.

Issued by California Public Utilities Commission.

Decision 90-10-020, Application 90-06-054.

APPENDIX A

AGREEMENT REGARDING CONDITIONS
TO BE INCLUDED IN PSC CERTIFICATE

I have read the Protest and Request for Hearing filed by the Transportation Division staff on July 27, 1990. As the transferee in Application 90-06-054, I hereby agree to the conditions set forth on page 5 of the staff's filing, specifically:

- 1) I will not conduct operations as a passenger stage corporation unless there is on file and in effect with the Commission evidence of adequate liability insurance protection as required by General Order 101-E.
- 2) I will not operate any vehicles which are not covered by my own liability insurance policy.
- 3) Before engaging a sub-carrier, I will verify that the sub-carrier's operating authority is in good standing with the Commission and that every vehicle which will be operated by the sub-carrier is covered by the sub-carrier's own liability insurance policy.
- 4) I will not through a lease, assignment, or any other arrangement, allow the passenger stage corporation certificate to be used by others.

I am agreeing to these conditions with the understanding that the Transportation Division staff will now withdraw its protest and recommend to the Commission that the conditions be included in the passenger stage corporation certificate I have applied to transfer.

8/16/90
Date

Judy Brissey
Judy Brissey
Applicant in A.90-06-054

(END OF APPENDIX A)